

NOT DESIGNATED FOR PUBLICATION

No. 111,504

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

STEVEN D. DICKSON, II,
Appellant,

and

LUCYL M. DICKSON,
Appellee.

MEMORANDUM OPINION

Appeal from Riley District Court; DAVID L. STUTZMAN, judge. Opinion filed October 10, 2014.
Affirmed.

Jennifer Martin Smith, of Topeka, for appellant.

Phon Sounakhen, of Kansas Legal Services, of Manhattan, for appellee.

Before MALONE, C.J., GREEN and BUSER, JJ.

Per Curiam: Steven D. Dickson, II, appeals the district court's decision awarding Lucyl M. Dickson primary residential custody of the parties' minor son and ordering Steven to pay Lucyl \$1,300 per month in maintenance for 36 months. Steven argues that the district court erred (1) in the amount of maintenance it awarded, (2) by factoring in work-time child care expenses for Lucyl when Steven and his family could provide that child care at no cost, (3) by awarding Lucyl primary residential custody of the minor son, and (4) by denying Steven the opportunity to present all his evidence at trial. Finding no error, we affirm the district court's judgment.

Steven and Lucyl met in South Korea in December 2007 while Steven was stationed there on active duty in the United States Army; Lucyl was his housekeeper. They began dating and were married on December 3, 2008, in the Philippines, where Lucyl was from. After the wedding, Steven and Lucyl lived in Germany and moved to Kansas in September 2011. Their son, S.D., was born on September 29, 2011. Steven and Lucyl's relationship was volatile even before they moved to the United States. After S.D. was born, Steven's mother came to live with Steven and Lucyl for several weeks, which made Lucyl feel as though Steven and his family did not trust her to care for her child, although she previously had worked as a nanny and had eight siblings.

Things came to a head in the summer of 2012. In May or June 2012, Steven spent time in Arizona for a work obligation. After he returned, Lucyl discovered on Steven's cell phone text messages between him and a female colleague who also had gone to the Arizona training. Lucyl also found a photograph of the female colleague on Steven's cell phone. Although the parties' versions of the events differ, Lucyl and Steven's argument over the text messages and photograph escalated into a physical altercation. Steven admitted at trial that he "physically restrain[ed]" Lucyl during the altercation; Lucyl testified that he put his arm around her neck and applied pressure, making it difficult for her to breathe. As a result of the altercation, the police came to the house and Steven was arrested, though ultimately he was not prosecuted.

Shortly thereafter, Steven filed for divorce. The parties reconciled in January 2013, and the divorce action was dismissed. However, on May 22, 2013, Steven filed a second petition for divorce. On May 28, 2013, Steven filed a motion seeking a temporary ex parte order that would grant him residential custody of S.D. but would allow Lucyl parenting time; the district court entered temporary orders granting Steven's request. On June 3, 2013, the district court entered amended ex parte orders continuing Steven's primary residential custody but granting Lucyl parenting time every other weekend.

Lucyl then filed a proposed parenting plan, her domestic relations affidavit, and an answer to the petition for divorce. Lucyl did not dispute that the court should grant the divorce, but she did request spousal support and asked that Steven make payments on their Toyota RAV4 in lieu of spousal support and that the RAV4 be set aside for Lucyl. On July 11, 2013, Lucyl filed a motion to modify the amended temporary ex parte custody orders. She requested that her counsel be allowed access to a custody evaluation prepared during the first divorce proceedings in 2012 and asked the district court to increase her parenting time, to order Steven to continue making payments on the RAV4, and to award her \$500 per month in maintenance.

The district court held the pretrial conference on August 7, 2013, at which it set the trial date for September 24, 2013, at 1:15 p.m. and ordered the parties to obtain an addendum to the previous custody evaluation as soon as possible. That same day, the district court entered an order modifying its amended temporary ex parte orders and granting shared residential custody to the parties. The district court also granted Lucyl the exclusive temporary possession and use of the RAV4, with Steven continuing to make the payments. Finally, the district court ordered Steven to pay \$251 per month in child support and \$1,300 per month less the amount of the car payment in maintenance.

Steven filed a motion for continuance of the trial date, which was granted. On December 9, 2013, Lucyl filed proposed findings of fact and conclusions of law and a proposed witness and exhibit list. On December 12, 2013, Steven filed a supplemental factual statement with the court. Steven specifically argued that if the court granted Lucyl residential custody, it should not award money for work-related child care expenses, as Steven's family members were available to watch S.D. at no charge. Regarding maintenance payments, Steven alleged that because he kept Lucyl's income at 100% of the federal poverty guidelines, no additional award of maintenance was necessary.

The trial began on December 19, 2013. Steven first called Officer Joshua Opat from the Riley County Police Department, the officer who had responded to the domestic violence call in July 2012. Next, Steven called Dr. Thomas Coleman, the clinical psychologist who performed the court-requested parental evaluation of both parties in 2012. Coleman testified that he thought the parties could handle a shared custody arrangement. Steven testified extensively on his own behalf. Next, Steven called his sister-in-law, Janet Dickson, who testified that she had been providing child care for S.D. since Steven filed for divorce and that she would be willing to do the same when S.D. was in Lucyl's custody. When Janet completed her testimony it was the end of the scheduled time, so the district court continued the rest of the trial until January 8, 2014.

When the trial resumed, Lucyl called a coworker and a friend who testified regarding Steven and Lucyl's interactions with each other and S.D. Lucyl testified in detail about her marriage and relationships with Steven and S.D. After Lucyl testified, the district court heard closing argument from counsel and took the matter under advisement.

On February 3, 2014, the district court filed a 13-page memorandum decision and decree of divorce. The district court granted the divorce and granted primary residential custody to Lucyl, with parenting time to Steven. The district court refused Steven's suggestion that Lucyl be required to use Janet for Lucyl's work-related child care needs and explicitly stated that Lucyl could "use whatever appropriate child care provider she chooses" for that purpose. The district court then ordered Lucyl's counsel to prepare a proposed child support worksheet and parenting plan in accordance with the court's orders. The district court adopted Lucyl's maintenance proposal and ordered Steven to pay Lucyl \$1,300 per month in maintenance for 36 months beginning February 1, 2014.

On March 3, 2014, Steven filed a motion for a new trial or, in the alternative, to alter or amend the judgment. Lucyl filed a written response. On March 18, 2014, the district court filed its order denying Steven's motion for new trial or to alter or amend the

judgment. The same day, the district court filed its supplemental order establishing a parenting plan, holiday schedule, and child support. With certain noted exceptions, the district court adopted Lucyl's proposed parenting plan and holiday schedule. As to child support, the district court again rejected Steven's objections to Lucyl's work-related child care expenses. On March 20, 2014, the district court filed a permanent parenting plan and support order. Steven timely appealed the district court's judgment.

MAINTENANCE AWARD

Steven first contends that the district court abused its discretion in ordering him to pay \$1,300 per month in maintenance. Specifically, Steven argues that the district court (1) failed to properly consider the required factors in determining the amount of maintenance payments, including the fact that Steven retained all the marital debt, and (2) misunderstood Steven's obligation to financially support Lucyl as necessary to keep her income at least at the federal poverty guideline for her household size. Lucyl responds that the district court did not abuse its discretion in awarding maintenance.

An appellate court generally reviews a district court's maintenance award for abuse of discretion. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 706, 229 P.3d 1187 (2010). "A judicial action constitutes an abuse of discretion if the action: (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. [Citation omitted.]" *In re Marriage of Thomas*, 49 Kan. App. 2d 952, 955, 318 P.3d 672 (2014). The party who asserts that the district court abused its discretion bears the burden of showing it. 49 Kan. App. 2d at 955.

K.S.A. 2013 Supp. 23-2901 *et seq.* governs an award of spousal maintenance. The district court may award maintenance or an allowance for future support to either party "in an amount the court finds to be fair, just and equitable under all of the circumstances." K.S.A. 2013 Supp. 23-2902. The amount of maintenance is based not only on the needs

of the party requesting it, but also on the ability of the other party to pay support. *In re Marriage of Vandenberg*, 43 Kan. App. 2d at 713.

The district court addressed maintenance by summarizing some facts and the parties' arguments on the issue. Specifically, the district court noted that because Lucyl was not yet eligible to become a United States citizen, Steven remained obligated to the federal government to support Lucyl to at least the federal poverty threshold, which Steven contended was approximately \$960 per month. Steven also paid \$500 per month on the Toyota RAV4 Lucyl used, as well as \$50 per month for insurance. The district court summarized Steven's arguments as contending that "paying the car loan for three years provides an appropriate and sufficient maintenance award" and further arguing that Lucyl was intentionally underemployed because she hoped to "maximiz[e] her financial gain through a generous maintenance award." [Citation omitted.] Steven also argued that Lucyl would take any additional maintenance and send it to her family in the Philippines.

The district court summarized Lucyl's arguments and relevant facts as follows: Lucyl asked for \$1,300 per month in maintenance for 3 years. She worked 16-20 hours per week as a housekeeper, making \$8.50 per hour, but was in school to become a registered nurse; she estimated that she could complete that education in approximately 3 years. Lucyl paid \$295 per month in government-subsidized rent for her housing and denied a desire or plan to gain a financial windfall through the maintenance payment. Regarding the RAV4, Lucyl accepted that Steven's monthly payments would be set off against the total amount she requested.

The district court further stated that Steven claimed his income was \$89,000 per year, or \$7,400 per month, while Lucyl claimed hers was approximately \$737 per month, working part-time. Regarding the division of property and debts, the district court noted Steven's argument that his intention to take on all of the debt supported his maintenance proposal. The district court listed the debt as including the home loan, the outstanding

amount of which—just under \$270,000—was "virtually equal" to the home's value as reported by Steven; the approximately \$58,000 loan for Steven's Mercedes, which he would retain; a credit card balance of approximately \$9,600; and a \$700 debt to Best Buy. The district court also noted that both Steven and Lucyl wanted Lucyl to obtain financial independence and apply for citizenship as soon as possible, and they both generally agreed that those goals were attainable in 3 years. Having "considered those arguments and the evidence, along with the applicable factors," the district court adopted Lucyl's proposal and ordered Steven to pay Lucyl \$1,300 per month as maintenance for 36 months, terminating on the death of either party or Lucyl's remarriage.

The Court's Alleged Failure to Consider Certain Factors

Steven argues that the district court failed to properly consider the required factors in determining the amount of maintenance payments. Steven cites *Williams v. Williams*, 219 Kan. 303, 306, 548 P.2d 794 (1976), as listing the factors for a court to consider when determining whether to award maintenance. Those factors include the parties' ages; their present and prospective earning capacities; their needs; their family ties and obligations; their overall financial situation; their property; the time, source, and manner of the acquisition of property; and the length of the marriage. 219 Kan. at 306. Steven argues that the district court did not address each of these factors; specifically, he complains that the district court did not address the parties' ages or the "relatively short length" of the marriage and that the district court did not explain why it did not give Steven credit for six \$1,300 payments Steven asserts he already made.

Williams does not require the district court to consider all the listed factors in each case. See 219 Kan. at 306 (listing factors as "[o]ther matters which *may* be considered" [emphasis added]); see also *In re Marriage of Michel*, No. 107,867, 2013 WL 5976073, at *12 (Kan. App. 2013) (unpublished opinion) (finding *Williams* language discretionary not mandatory). The *Williams* court itself stated: "There is no fixed rule on the subject

[of maintenance] and the district court in a divorce action is vested with wide discretion in adjusting the financial obligations of the parties." 219 Kan. at 306.

Steven also protests that the district court "failed to address the significance of [Lucyl] remaining willfully under-employed." The district court did, however, recognize that Steven contended that Lucyl was declining to use her education and licensure as a certified nurse's assistant as part of a plan to maximize her maintenance award. The district court also noted that Lucyl denied any plan to remain willfully underemployed. Apparently the district court found Lucyl's testimony on this point more credible than Steven's testimony. "When reviewing whether substantial evidence supports a factual finding, this court does not reweigh the evidence, resolve conflicts within the evidence, or pass on the credibility of witnesses. [Citation omitted.]" *Progressive Products, Inc. v. Swartz*, 292 Kan. 947, 955, 258 P.3d 969 (2011).

Likewise, Steven contends that the district court ignored the fact that he retained all of the marital debt. He argues that because the memorandum opinion did not address the fact that he retained the debt, the district court failed to adequately demonstrate that its award was fair, just, and equitable. Lucyl responds that the evidence presented showed that although she was not left with the debt, she also retained none of the marital assets aside from a vehicle. Lucyl testified at trial that she had not taken any of the household goods from the marital home and that she was not asking for any such property. As Lucyl points out, the district court explicitly noted these facts in its memorandum decision, stating: "Although [Steven] agrees to assume responsibility for debt payments, he also is receiving both the real estate and the vast majority of the personal property of the marriage, including virtually all of the household goods." This clear acknowledgement of the situation refutes Steven's contention that the district court ignored these facts.

Finally, Steven argues that the district court did not sufficiently explain how it determined that an award of \$1,300 was fair or reasonable. Steven argues that because the

district court did not articulate which factors it considered or how it determined the amount of the maintenance award, there is no evidence to support a conclusion that the award is fair, just, and equitable as required by K.S.A. 2013 Supp. 23-2902.

In its memorandum decision, after recounting the parties' requests, arguments, and facts as related above, the district court stated that Lucyl's "proposal should be adopted." Although it did not explicitly identify that proposal, Lucyl's proposed findings of fact and conclusions of law filed on December 9, 2013, requested \$1,300 per month in maintenance, less the monthly car payment, for 3 years, which is the maintenance that the district court ultimately awarded. To justify the maintenance, Lucyl stated:

"[The amount requested] is a little less than 20% of the difference in the parties' current income with Wife at imputed minimum wage. Wife requests that maintenance be paid for the next three (3) years, which is the estimated time for Wife to obtain a degree/license as a Registered Nurse or the necessary time for her to become a naturalized citizen of the U.S. Wife is currently in school trying to obtain her LPN and or [sic] RN degree. She also works part time at Hospice & Homecare Inc. at \$8.50 an hour at 20 hours per week, about \$737.00 per month. Petitioner makes about \$7,956.00 per month gross income. Spousal maintenance would be appropriate considering the circumstances of this case."

Lucyl also testified at trial that her apartment was sparsely furnished and that her rent was \$295 per month because it was subsidized, but if it was not subsidized, she would have to pay \$680 per month. She stated that she could not afford to pay all of her expenses—such as rent, food, utilities, gas, etc.—on her own without financial assistance. In addition, she testified that she would not have health insurance after the divorce, and she would also become responsible for expenses such as car registration.

As stated above, "[t]here is no fixed rule on the subject [of maintenance] and the district court in a divorce action is vested with wide discretion in adjusting the financial obligations of the parties." *Williams*, 219 Kan. at 306. A district court may award

maintenance in an amount that is "fair, just and equitable under all of the circumstances." K.S.A. 2013 Supp. 23-2902. Despite Steven's arguments to the contrary, there was evidence in the record to support the amount and duration of the maintenance award.

Affidavit of Support

Steven's final argument regarding maintenance is that the district court misunderstood his obligation to the federal government to maintain Lucyl. An applicant for United States legal permanent resident status based upon marriage to a United States citizen must prove that he or she is not likely to become a public charge. Roche, *Maneuvering Immigration Pitfalls in Family Court: What Family Law Attorneys Should Know in Cases with Noncitizen Parties*, 26 J. Am. Acad. Matrim. Law. 79, 93 (2013). One way to prove this is by having a sponsor who can demonstrate sufficient financial means sign a legally binding affidavit of support, otherwise known as an I-864 form, "in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable." 8 U.S.C. § 1183a(a)(1)(A) (2012); see also 26 J. Am. Acad. Matrim. Law. at 93-94. A subsequent subsection of the federal statute addresses active duty armed service members who (a) are petitioning for the admission of a noncitizen as the armed service member's spouse or child and (b) cannot demonstrate the means to maintain an annual income of at least 125 percent of the federal poverty line; it allows such people as sponsors if they can demonstrate the means to maintain an annual income equal to at least 100 percent of the federal poverty line. 8 U.S.C. § 1183a(f)(3).

When Lucyl came to the United States, Steven executed an I-864 affidavit. Steven now argues that the district court, when awarding maintenance, ignored his obligation under the I-864 affidavit; although Steven is not explicit, the implied argument is that the district court erred when it ordered maintenance in an amount that placed Lucyl's income over 100 percent of the federal poverty line. Lucyl replies by pointing out that Steven has

cited no authority for his implied position that the district court erred by awarding maintenance that placed Lucyl's income over 100 percent of the federal poverty line.

Lucyl is correct. Steven does not explain why his obligation under the I-864 affidavit should limit a district court's ability to award maintenance. The obligation undertaken by signing an I-864 affidavit is to ensure that the immigrant will not become a public charge. See 8 U.S.C. § 1183a(a)(1). A Kansas court awards maintenance, on the other hand, "to provide for the future support of the divorced spouse, and the amount of maintenance is based on the needs of one of the parties and the ability of the other party to pay. [Citation omitted.]" *In re Marriage of Hair*, 40 Kan. App. 2d 475, 484, 193 P.3d 504 (2008), *rev. denied* 288 Kan. 831 (2009). Steven does not provide any Kansas legal authority that supports the position that the existence of an I-864 affidavit restricts a Kansas district court's ability to award maintenance to an amount that, when considered with the receiving spouse's income, does not exceed 100 percent of the federal poverty line.

Moreover, Steven has not provided any legal authority to show that the existence of an I-864 affidavit affects in any way the amount of maintenance a district court may properly award. Failure to support a point with pertinent authority or show why it is sound despite a lack of supporting authority is akin to failing to brief the issue. *In re Acquisition of Property by Eminent Domain*, 299 Kan. 37, 49, 320 P.3d 955 (2014). If the appellant fails to brief an issue, the issue is waived and abandoned. 299 Kan. at 49.

Here, the district court acknowledged that Steven remains obligated under the I-864 affidavit. After recognizing this obligation, the district court continued on to award Lucyl maintenance payments, implicitly finding that the obligation under the I-864 affidavit did not restrict its maintenance award. Steven has failed to show that this was incorrect, much less that it was an abuse of discretion by the district court. In conclusion, the district court properly considered the necessary factors in determining the amount of

maintenance it awarded Lucyl and did not improperly disregard Steven's continuing obligation under the I-864 affidavit. Therefore, the district court did not abuse its discretion in awarding Lucyl \$1,300 per month in maintenance.

CHILD CARE CREDIT

Next, Steven contends that the district court erred by including work-related child care expenses in its child support calculation after Steven had presented evidence that he and his family could provide free child care during Lucyl's work hours. Lucyl responds that the district court's decision was not erroneous, especially in light of the history of animosity between Steven's family and Lucyl.

"The standard of review of a district court's order determining the amount of child support is whether the district court abused its discretion, while interpretation and application of the Kansas Child Support Guidelines [(KCSG)] are subject to unlimited review.' [Citation omitted.]" *In re Marriage of Thomas*, 49 Kan. App. 2d at 954-55. "A judicial action constitutes an abuse of discretion if the action: (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. [Citation omitted.]" 49 Kan. App. 2d at 955.

Under the KCSG, computation of a child support obligation should include "[a]ctual, reasonable, and necessary child care costs paid to permit employment or job search of a parent." Administrative Order No. 261, Kansas Child Support Guidelines, § IV.D.5 (2013 Kan. Ct. R. Annot. 136). The determination of whether child care expenses were "necessary" is a factual determination; therefore, if substantial competent evidence did not support this finding, the district court abused its discretion. See *Fischer v. State*, 296 Kan. 808, 825, 295 P.3d 560 (2013) (A district court abuses its discretion "if substantial competent evidence does not support a factual finding on which a prerequisite conclusion of law or the exercise of discretion is based. [Citation omitted.]").

Lucyl testified at trial that she paid \$75 per week for daycare, and she asked the district court to consider that expense when calculating child support. Steven testified that his brother and Janet were willing to help Lucyl with child care; indeed, Janet testified that she would provide child care during Lucyl's parenting time if Lucyl needed it. Moreover, Dr. Coleman testified that he saw no reason why Janet could not take care of S.D. if she were available to do so during Lucyl's working hours. Lucyl acknowledged that she knew that Janet and her husband provided daycare for S.D. when Steven had S.D., but Lucyl felt it was beneficial for S.D. to go to a daycare. She also testified that although she had tried to have a good relationship with Janet, their relationship was not friendly enough that she could co-parent and utilize Janet as a child care provider; thus Lucyl specifically asked the district court not to order her to use Janet for child care.

In its memorandum decision, the district court explicitly stated that Lucyl could "use whatever appropriate child care provider she chooses." Steven subsequently filed a child support worksheet and argued that the district court should not consider Lucyl's work-related child care expenses and claimed that if Lucyl chose to use a child care provider other than Janet, he should not have to share in that cost. When the district court filed its supplemental order on child support, it again rejected Steven's argument. Specifically, the court stated: "The Court understands [Steven's] argument about 'free' child care and has previously rejected it. The Court does so again. [Lucyl's] work-related child care expense should be included on the worksheet."

Steven now makes the same argument to this court: he contends that the costs in question are unnecessary and therefore the district court abused its discretion by including the costs on the child support worksheet. In support, Steven cites *In re Marriage of Scott*, 263 Kan. 638, 952 P.2d 1318 (1998). At the time of their divorce, David and Renee Scott entered into a property settlement agreement that gave primary custody of their three children to Renee and required David to pay child support. Two years later, a hearing officer granted Renee's motion to increase child support and

included in the calculation the work-related child care services Renee had arranged with a neighbor. However, the district court found that David's mother was suitable, available, and willing to provide child care at no cost and at all times, so the district court removed the work-related child care cost from David's child support obligation.

On appeal, Renee argued that the district court erred in deleting the costs because having David's mother provide child care was not in the children's best interests due to her alleged alcohol abuse and the youngest child's need for preschool. Our Supreme Court noted that the applicable test for determining whether the costs should be included is not a "best interests of the child" test; rather, the test is whether the costs are (1) actual, reasonable, and necessary, and (2) incurred to permit employment or job search. 263 Kan. at 643. The court further noted that the district court had expressly found that Renee's costs were unnecessary because David's mother was available at no cost. 263 Kan. at 642. The court held that this finding was not an abuse of discretion because evidence existed to support the district court's decision. 263 Kan. at 642-43.

Here, the district court found that "[t]he record is replete with a history of denigration and disrespect, some clearly intentional and some perhaps not, from [Steven] and his extended family toward [Lucyl]." There was substantial evidence presented at trial to support this finding. Lucyl explicitly testified that her poor relationship with Janet prevented her from using Janet as a child care provider. She also testified about a time when Janet came to her house and yelled at her after Steven was arrested as a result of a domestic disturbance with Lucyl. Dr. Coleman stated that he would be concerned about a family member acting as a child care provider if there was open animosity toward or criticism of Lucyl in front of S.D. Steven testified about the difficulties between Lucyl and Janet during Steven's marriage to Lucyl. Steven agreed with the statement that, at the time of the trial, Lucyl and Janet did not have a good relationship.

All of this testimony distinguishes the instant case from *Scott*. In *Scott*, the district court found that alternative child care was unnecessary when the paternal grandmother was suitable to provide child care and the court "heard nothing persuasive here to suggest that she could not fill the bill as well as any other day care facility." 263 Kan. at 641. On appeal, the Kansas Supreme Court determined that the district court's finding was supported by the evidence and was not an abuse of discretion. 263 Kan. at 642-43.

Here, on the other hand, there was substantial competent evidence to support the district court's finding that the contentious relationship between Lucyl and Janet created a situation in which Janet was not a suitable child care option. Thus, it was necessary for Lucyl to use other daycare. The district court could have denied Lucyl's request to include work-related child care expenses in the child support calculation and such a ruling probably would not have been an abuse of discretion. But likewise, the district court's decision requiring Steven to share in that cost was supported by substantial evidence and did not constitute an abuse of discretion.

CUSTODY ORDER

Next, Steven asserts that the district court erred when it granted Lucyl primary residential custody of their child, S.D. Steven contends that the district court arbitrarily disregarded evidence presented at trial that showed shared residential custody was in S.D.'s best interest. Steven also argues that the district court made factual findings that were not supported by substantial competent evidence. Lucyl, on the other hand, argues that the district court's custody order was based upon well-supported factual findings and was in the best interests of S.D.

K.S.A. 2013 Supp. 23-3201 mandates that a "court shall determine custody or residency of a child in accordance with the best interests of the child." Our Supreme Court has stated that

""[w]hen the custody issue lies only between the parents, the paramount consideration of the court is the welfare and best interests of the child. The trial court is in the best position to make the inquiry and determination, and in the absence of abuse of sound judicial discretion, its judgment will not be disturbed on appeal. [Citations omitted.]" [Citation omitted.]

"[Citation omitted.] Under an abuse of discretion standard, 'the trial court's decision is protected if reasonable persons could differ upon the propriety of the decision as long as the discretionary decision is made within and takes into account the applicable legal standards.'" *Harrison v. Tauheed*, 292 Kan. 663, 672, 256 P.3d 851 (2011).

K.S.A. 2013 Supp. 23-3203 directs that a district court determining child custody shall consider all relevant factors and provides an inclusive list of factors to consider. Here, the district court identified five of the factors as relevant:

"(b) the desires of the child's parents as to custody or residency;

....

"(d) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

"(e) the child's adjustment to the child's home, school and community;

"(f) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent; [and]

"(g) evidence of spousal abuse." K.S.A. 2013 Supp. 23-3203.

Turning to the statutory factors, the district court noted that both parents wanted residential custody, S.D. did well with both of them, and he was well-adjusted to each home. Recognizing the reality that S.D. would likely live in "a number of residences in his childhood," the district court determined that more important considerations included the care S.D. received and the way he would see his parents and other adults interact. From that perspective, the district court gave the factors in K.S.A. 2013 Supp. 23-3203(f) and (g) more weight. Regarding those factors, the district court stated:

"From the evidence, the factors in [K.S.A. 2013 Supp.] 23-3203(f) and (g) weigh heavily in favor of [Lucyl]. The Court is persuaded that [Lucyl] is much more likely to respect the importance of [Steven] to her child than [Steven] would be if the living arrangement were to be reversed. The record is replete with a history of denigration and disrespect, some clearly intentional and some perhaps not, from [Steven] and his extended family toward [Lucyl]. That is distinctly *not* in the best interest of this child. This child will benefit from each parent respecting the importance of the other as his or her child's other parent, and from each parent acting in a way that merits that respect."

Steven's challenge to the award of residential custody consists of Steven pointing out evidence he presented at trial that was either not clearly noted in the district court's memorandum decision or is contrary to the district court's findings. Essentially, he is challenging the sufficiency of the evidence supporting the district court's findings on S.D.'s best interests. As Steven acknowledges, an appellate court "reviews the evidence in a light most favorable to the prevailing party below to determine if the court's factual findings are supported by substantial competent evidence and whether those findings support the court's legal conclusion." *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 704, 229 P.3d 1187 (2010).

Steven specifically challenges the district court's consideration of spousal abuse, asserting that the district court included this "without any form of evidence, and certainly no substantial competent evidence." At trial, however, Lucyl testified that Steven pushed her, held her down on the ground, and wrapped his arm around her neck for about 10 minutes, making it hard for her to breathe. The district court also received into evidence photographs that showed Lucyl with bruising around her neck and scratches on her arms. Further, Officer Opat, who responded to the house on the night of the incident and ultimately arrested Steven, testified Steven had told Opat he pushed Lucyl during the incident. This testimony provided substantial competent evidence of spousal abuse, and the district court did not abuse its discretion in considering that factor.

The rest of Steven's arguments on this issue do not challenge the evidence that supports the district court's factual findings as much as they highlight for this court evidence that would support a contrary finding. For example, Steven contends that the district court failed to recognize Lucyl's part in causing their disputes. The district court did recognize Lucyl's responsibility; it explicitly noted that Lucyl admitted to overreacting in conflicts with Steven. The district court's decision not to recount every piece of evidence in its memorandum decision does not necessarily mean that the court was not aware of or did not consider the evidence.

Put simply, Steven asks this court to reweigh evidence and determine credibility on contested issues, which this court does not do. See *In re Marriage of Vandenberg*, 43 Kan. App. 2d at 705 (stating that an appellate court reviewing a district court's custody determination should not reweigh the evidence, pass on witness credibility, or redetermine questions of fact that were presented to the district court). The district court was more persuaded by Lucyl's testimony, and this court does not redetermine questions of fact. Steven has failed to show that the district court abused its discretion by awarding primary residential custody to Lucyl.

OPPORTUNITY TO PRESENT EVIDENCE AT TRIAL

Finally, Steven argues that the district court committed reversible error by attempting to "hurry along" the trial, by precluding him from calling certain witnesses in the interest of saving time, and by refusing to allow him to present rebuttal evidence after Lucyl concluded presentation of her case. Lucyl contends that the record on appeal does not support Steven's characterization of events, nor does it show that Steven attempted to present rebuttal evidence and was denied the opportunity to do so by the court.

Steven contends that the district court allocated only a half day for trial despite both parties requesting a full-day setting. The record reflects that the trial began in the

morning of December 19, 2013. At the end of the first morning of trial, the district court noted that the trial would need to be completed on another day. The trial resumed on January 8, 2014, and the parties presented the remaining evidence. Thus, although the district court initially allocated only a half day for the trial, the parties eventually received what amounted to a full-day hearing.

Steven also contends that "[w]hen the trial appeared to be taking longer than anticipated, the court apparently called [Steven's] counsel into chambers in an attempt to 'hurry along' the trial." Steven provides two citations to the appellate record to support this assertion. First, Steven cites to his motion for a new trial or to alter or amend the judgment, in which he asserted without further support that "during a conference in chambers while testimony was on break, the Judge reminded counsel of the time allocated for trial." Second, Steven cites to the following portion of the trial transcript:

"Q. [By Steven's counsel] I want to go and switch gears from the financial and talk about your marriage. Can you provide the Court with a timeline of some of Lucy's concerning behaviors?

"THE COURT: Before we do that I'm going to take a break and I would like to see counsel, please.

"(A recess was taken, after which the following proceedings were had.)

"THE COURT: Mr. Washburn.

"MR. WASHBURN: Thank you, Your Honor."

"Q. (By Mr. Washburn) In order to conserve time that I'm probably going to jump around from what you have expected, Mr. Dickson."

Steven's counsel then resumed questioning; the record does not reflect the content of the conversation that took place between the judge and counsel during the break. The record does not directly support Steven's assertion that the judge "prompted [Steven's] counsel to revise his direct examination in order to 'conserve time.'"

Additionally, Steven asserts that on the second day of trial, when Lucyl concluded her presentation of evidence, the court "instructed [Steven's] counsel to proceed with closing arguments rather than allowing time for rebuttal evidence." But the record does not support Steven's assertion. After Lucyl's counsel finished final redirect examination of Lucyl, the following colloquy occurred:

"MS. SOUNAKHEN: Nothing further, Your Honor.

"THE COURT: Okay. Thank you. You may step down.

"A. Thank you.

"THE COURT: Further evidence?

"MS. SOUNAKHEN: No, Your Honor.

"THE COURT: Okay. Brief remarks, Mr. Washburn.

"MR. WASHBURN: Thank you, Your Honor."

Steven's counsel went directly into his closing argument; he did not ask the district court for the opportunity to present rebuttal evidence.

As the party making the claim of error, Steven bears the burden to designate facts in the record to support his claim; without such a record, his claim fails. See *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644-45, 294 P.3d 287 (2013). Here, Steven has failed to provide an appellate record sufficient to show that the district court hurried him along by denying him the opportunity to present additional evidence. Also, Steven failed to object at trial to the district court's actions of which he now complains and he failed to proffer the substance of any evidence that the district court allegedly excluded at trial. Simply put, the record on appeal does not support Steven's assertion that the district court denied him the opportunity to present all his evidence at trial.

Affirmed.